

REMARKS

Claims 1-10 are pending in the application.

The Applicant and Applicant's representative appreciate the Examiner clearly setting forth the Office's position on page 3 of the Office Action.

Claims 1-3 and 5-10 stand rejected under § 102(e) as anticipated by Broyles. Claim 4 stands rejected under § 103 based on Broyles and Ecklund.

Independent claim 1, the only independent claim in the application, recites that "at least two adjacent ribs are elastic such that the elastic ribs are stretchable and then resume their original shape when released." This feature allows a doctor to create a wide opening between two neighboring ribs, as illustrated in Figure 3 of the present application, and then have the ribs return to their original position so that the ribs can serve as reference points during a medical procedure.

In the "Response to Arguments" the Office states that "[i]f the strips [18 of Broyles] are a thin wire, the elastic will automatically return to it's original shape."

However, the Broyles patent does not indicate that the strips may be a thin wire, and the disclosure of Broyles indicates that the strips 18 are thick. As shown in the attached mark-up of Figure 2 of Broyles, the strips 18 are shown in cross-section in Figure 2 as thick semicircular members. Thus, the disclosure of Broyles indicates that the strips are thick wires.¹ Furthermore, it would not have been obvious to modify the strips 18 of Broyles to be thin because the purpose of these strips 18 (as disclosed in col. 4 of Broyles) is to be radiopaque and thus visible in a radiographic image. In order to be clearly visible in a radiographic image, the strips 18 would be thick in cross-section, not thin. Accordingly, the Broyles strips are not made out of thin wire and thus the ribs in Broyles will not automatically return to their original shape.

¹ Please note that the arrows in Figure 1 of Broyles showing the vantage point of Figure 2 are going in the wrong direction.

Also, even if the strips 18 were thin wire (which they are not), the ribs would not be “stretchable and then resume their original shape when released” as claimed. As shown in Figure 3 of the present application, the ribs must be stretchable (that is, capable of being elongated) and then return to their original shape. Thin wire can not be stretched and then returned to its original shape.

The Office states that the Broyles specification states that “the material” should be capable of “returning substantially to its original dimensions after imaging is complete.” However, this disclosure in col. 3, third full paragraph, of Broyles refers to the material of the substrate 10. This sentence does not refer to the material of the strips 18. Strips 18 are not described until col. 4 of Broyles.

Please note that the Broyles device (with thick metal wires as strips 18) can be placed into a C shape to conform to a patient and then returned to a flat cross-section. This is indicated in the attached Exhibit which shows a cross-section of the Broyles device placed on a curved surface of the skin. In the enclosed Exhibit, the bottom of the Exhibit shows a plan view of the Broyles device and the top view shows a cross-section of the Broyles device on the curved skin surface. In the top view, the black “dots” are the cross-sectional areas of the strips 18 (strips 18 run perpendicular to the surface of the sheet of paper).

It is thus respectfully submitted that independent claim 1, and associated dependent claims, are clearly not disclosed or suggested by Broyles for at least the reason that Broyles does not disclose or suggest “at least two adjacent ribs are elastic such that the elastic ribs are stretchable and then resume their original shape when released.”

Furthermore, features of dependent claims are not disclosed or suggested by Broyles.

For example, claim 5 requires that the grid be provided with markings that show the ordinal number of the respective rib. This feature is not disclosed or suggested by Broyles. The discussion in col. 6, lines 6-8, of Broyles merely refers to printing “indicia or other markings” on the substrate. There is no indication as to what this indicia or other markings are. Such markings could be, for example, the manufacturer’s name, the product name or trademark, “patent pending,” or other markings. A marking such as the product name or

trademark would not inherently identify different ribs. Furthermore, markings that show the ordinal number of respective ribs are particularly useful to the doctor because a doctor will typically count the number of ribs in order to position a needle between the correct ribs. For example, as shown in Figure 2 of the present application, a doctor will count the number of ribs in order to insert needle 15 between the fourth and fifth ribs. Thus, the claimed markings are more intuitive.

It is thus respectfully requested that the rejections be reconsidered and withdrawn.

Respectfully submitted,

By 

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FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5426
Facsimile: (202) 672-5399

Glenn Law
Attorney for Applicant
Registration No. 34,371

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